Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60

MEMORANDUM OPINION AND ORDER

Adopted: June 7, 2017 **Released: June 8, 2017**

By the Commission:

1. In this Memorandum Opinion and Order, we implement the Rural Healthcare Connectivity Act of 2016, which amends section 254(h)(7)(B) of the Communications Act of 1934 (the Act), to include skilled nursing facilities (SNFs) amongst the list of health care providers eligible to receive Rural Health Care (RHC) Program support.[1] Specifically, we amend section 54.600(a) of our rules defining "health care provider" under the RHC Program to include SNFs as eligible health care providers.[2]

2. In the 1996 Act, Congress limited the types of health care providers eligible to receive support. SNFs were not included as an eligible entity type.[3] Following the 1996 Act, the Commission established the RHC Program implementing the provisions of the 1996 Act and adopting rules for the program, including section 54.600(a), which defines "health care provider[s]" supported under our RHC support programs in a manner that mirrored the terms of section 254(h)(7)(B) of the Act.[4] This definition did not include SNFs.[5]

3. On June 22, 2016, the President signed legislation that included SNFs amongst the list of health care providers eligible to receive RHC Program support.[6] We interpret this law as directing the Commission to include SNFs in all programs for which health care providers are otherwise eligible and therefore amend section 54.600(a) of the Commission's rules defining "health care provider" under the RHC Program to mirror the current statutory definition in 47 U.S.C. § 254(h)(7)(B).[7] We find that a

[1] *See* Frank R. Lautenberg Chemical Safety for the 21st Century Act, Title II – Rural Healthcare Connectivity, Pub. L. No. 114-182 (2016) (Rural Healthcare Connectivity Act of 2016) (amending the Act to include SNFs (as defined in section 1819(a) of the Social Security Act) as a health care provider type effective 180 days after the enactment of the Rural Healthcare Connectivity Act of 2016) (codified at 47 U.S.C. § 254(h)(7)(B)). Section 254 was added to the Act by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

[2] 47 CFR § 54.600(a).

[3] *See* 47 U.S.C. §§ 254(h)(1)(A), (2)(A); 47 U.S.C. § 254(h)(7)(B) (defining "health care provider" for these purposes). In addition, eligible health care providers must be non-profit or public. *See* 47 U.S.C. §§ 254(h)(1)(A), (h)(2)(A), (h)(4).

[4] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9093-9161, paras. 608-749 (1997) (subsequent history omitted) (establishing the Telecommunications Program); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678 (2012) (*Healthcare Connect Fund Order*) (establishing the Healthcare Connect Fund Program); 47 CFR Part 54, Subpart G.

[5] *See* 47 CFR § 54.600(a).

[6] *See* Rural Healthcare Connectivity Act of 2016. *See also* H.R. Rep. No. 114-582 (2016).

[7] *See* Appendix.

notice and comment rule making proceeding in this matter is unnecessary because the rule modification flows from the direction provided in the Rural Healthcare Connectivity Act of 2016 to include SNFs within the existing RHC Program.[8] Section 1.412(c) of our rules provides that rule changes may be adopted without prior notice where the Commission for good cause finds that notice and comment procedures are unnecessary, so long as the basis for the good cause finding is published with the rule changes. The final rule adopted in this Memorandum Opinion and Order does not involve discretionary action on our part, but rather simply effectuates the Act according to the specific terms set forth in the legislation, which became effective on December 19, 2016.[9] Accordingly, we conclude that this change constitutes a ministerial, noncontroversial amendment to our rules and thus this action falls within the "good cause" exception of the Administrative Procedure Act.[10] We therefore forgo notice and comment in this limited context.[11]

4. We also find good cause to make this rule change effective upon publication in the Federal Register. Specifically, making this rule change effective upon publication in the Federal Register enables SNFs to benefit expeditiously, consistent with Congress's goal of including SNFs as an eligible health care provider type under the RHC Program.[12] No additional time is needed for affected parties to prepare for the rule's effectiveness because Commission staff, USAC, and interested parties have already had a chance to do so; the associated RHC Program application forms incorporating SNFs into the RHC Program have already been prepared, put out for notice and comment, and approved.[13] Additionally, while the rule change enables SNFs to benefit from the RHC Program, it does not immediately oblige them to take any particular action unless they choose to do so. Thus, we find good cause to make this rule change effective upon publication in the Federal Register.

5. *Regulatory Flexibility Act.* Because we adopt this Memorandum Opinion and Order without notice and comment, the Regulatory Flexibility Act (RFA) does not apply.[14]

6. *Paperwork Reduction Act.* Because approval has already been obtained for the addition of SNFs to the category of eligible health care providers pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, this document does not contain any new or modified information collection requirements subject to PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

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[8] *See* Rural Healthcare Connectivity Act of 2016. *See also* House Report (noting, under Disclosure of Directed Rulemakings, that this legislation does not specifically direct any rulemakings to be completed).

[9] *See* Rural Healthcare Connectivity Act of 2016 (making the SNF amendment effective 180 days after the date of the enactment of this Act).

[10] *See* 5 U.S.C. § 553(b)(B).

[11] *See, e.g., Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, 30 FCC Rcd 2380 (2015) (implementing three provisions of the STELA Reauthorization Act of 2014 without notice and comment where their implementation entailed no exercise of the Commission's administrative discretion).

[12] *See* Rural Healthcare Connectivity Act of 2016.

[13] *See* Notice of Office and Management and Budget Action, Universal Service – Rural Health Care Program, OMB Control No. 3060-0804 (Sept. 7, 2016). *See also* Office of Information and Regulatory Affairs, Office and Management and Budget, Reginfo.gov, ICR Reference No: 201606-3060-028, RHC Program Supporting Statement, http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201606-3060-028 (last visited Mar. 16, 2017) (specifically referencing the addition of SNFs as a health care provider type and revising the burden estimates to account for the addition of another health care provider category).

[14] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

7. *Congressional Review Act*. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.[15]

8. *Additional Information*. For more information, contact Regina Brown, regina.brown@fcc.gov, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418-0792.

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i)–(j), 201(b), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)–(j), 201(b), 254, and the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Title II – Rural Healthcare Connectivity, Pub. L. No. 114-182, sec. 202, this Memorandum Opinion and Order IS ADOPTED.

10. IT IS FURTHERED ORDERED that Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in the Appendix, and such rule shall become effective upon publication of this Memorandum Opinion and Order in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[15] *See* 5 U.S.C. § 801(a)(1)(A).

APPENDIX

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 54, Subpart G, as follows:

PART 54—UNIVERSAL SERVICE

Subpart G – Universal Service Support for Health Care Providers

1. The authority citation continues to read as follows:

   Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend Section 54.600 to read as follows:

§ 54.600 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) *Health care provider*. A "health care provider" is any:

(1) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;

(2) Community health center or health center providing health care to migrants;

(3) Local health department or agency;

(4) Community mental health center;

(5) Not-for-profit hospital;

(6) Rural health clinic;

(7) Skilled nursing facility; or

(8) Consortium of health care providers consisting of one or more entities described in paragraphs (a)(1) through (a)(7) of this section.

(b) * * *

(1) * * *

(2) * * *

(c) * * *